

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

Case No. 00-16019

Craig A. Coon,

Chapter 7

Debtor.  
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Craig A. Coon,

Adv. Pro. 01-90001

Debtor,

-v-

John Hogan, individually and as a partner of  
Hogan & Hogan and Roy Kunston,

Creditors.  
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Appearances:

Richard L. Diamaggio, Esq.  
Attorney for Debtor  
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Clifton Park, New York 12065

Hogan and Hogan  
498 Broadway  
P.O. 1041  
Saratoga Springs, New York 12866

John Hogan, Esq.  
Pro Se

Cutler, Trainor & Cutler, LLP  
Attorneys for Creditor Knuston  
2 Hemphill Place  
Ballston Spa, New York 12020

James Trainor, Esq.  
Of Counsel

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

**Memorandum, Decision & Order**

Before the court is a motion for summary judgment by Roy Kunston (“Creditor or Defendant”). The Debtor Craig Coon (“Debtor or Plaintiff”) opposes; Defendant John Hogan,

Esq. has not submitted any pleadings in connection with this motion. The court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (G) and 1334(b).

### **Facts**

The objective facts are not in dispute and based upon the pleadings the court finds the following:

The Creditor was the owner/lessor of real property located at 199 Regent Street, Saratoga Springs, New York. The Debtor moved into apartment number one during the summer of 1999. The monthly rent was \$650. In August 2000, the Debtor fell behind in rent payments and at that time he gave the Creditor a \$300 check as a partial payment. When the Creditor attempted to cash this check, he was informed that there were insufficient funds in the account. The Debtor also failed to pay rent in September and October.

In October, the Creditor began eviction proceedings. The day the eviction was to be finalized, the Creditor was notified that the Debtor filed a voluntary Chapter 7 petition on November 7, 2000. After learning of the filing and that the eviction proceeding was stayed, the Creditor went to the police with the bounced check. At the station, the police informed the Creditor that he would need to formally protest the check which would form the basis of a criminal complaint. The Creditor did as instructed; a criminal complaint was filed and an arrest warrant was issued. Subsequently, on or about December 4, 2000, the Debtor was arrested at the apartment in front of his son; he spent the night in jail. At a hearing the next morning, the Creditor's attorney (Defendant John Hogan) informed the Debtor that if he vacated the premises then they would not pursue the charges. The Debtor agreed to leave the apartment. Thereafter, the Debtor filed this adversary proceeding, seeking damages for violation of the automatic stay

and related relief.

### **Discussion**

This intriguing question of first impression asks the court to decide whether, under the present facts and circumstances, the presentment of the \$300 check and the subsequent criminal prosecution constitutes a willful violation of the automatic stay. For the reasons that follow, the court determines that the stay was not violated. The court further finds that summary judgment is granted in favor of the Creditor<sup>1</sup> and the complaint is dismissed.

The automatic stay provision, embodied in 11 U.S.C. § 362, is a fundamental bankruptcy protection. While this safeguard is expansive, it does have exceptions, two of which are currently at issue: 11 U.S.C. §§ 362(b)(1)<sup>2</sup> and (11).<sup>3</sup> The Debtor cites several cases, the most applicable being *In re Williamson-Blackmon*, 145 B.R. 18 (Bankr. N.D. Ohio 1992), as support for his position that this court should attempt to garner the motivation behind the presentment of the check and the subsequent criminal proceeding. He argues these facts demonstrate an

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<sup>1</sup>Although Defendant John Hogan individually and Hogan & Hogan did not participate in this motion, the issue is decided as a matter of law and the complaint is dismissed in its entirety.

<sup>2</sup>11 U.S.C. § 362(b)(1) states:

(b) The filing of a petition under section 301, 302 or 303 of this title ... does not operate as a stay –

(1) under subdivision (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor.

<sup>3</sup>11 U.S.C. § 362(b)(11) states:

(b) The filing of a petition under section 301, 302, or 303 does not operate as a stay–

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument.

attempt to collect a debt in violation of 11 U.S.C. § 362(a)(1) and, therefore, monetary damages are warranted.

In *Williamson-Blackmon*, the debtor purchased a dinette set from the creditor. The purchase was made on a payment plan and the debtor tendered a check for \$50.00 with the balance to be made in monthly installments. The initial payment bounced and no other payments were made. After learning that the debtor had moved from the state, the creditors filed a complaint with the police department and an arrest warrant was issued. Subsequently, the debtor filed a Chapter 7 petition. The creditors were duly listed and notified of the filing and they ceased collection activities. Sometime later a police detective involved with the arrest warrant asked the creditors if they had located the debtor. They informed the detective that they had received notification of the filing which listed the debtor's new address. The debtor was arrested. Since the debtor was unable to post bond, she was incarcerated for 11 days before the police decided not to extradite her because of the small dollar amount involved. The debtor was released and she commenced an adversary proceeding seeking damages for violation of the automatic stay.

In deciding that the facts did not support a cause of action under 11 U.S.C. § 362, the court indicated that in certain circumstances it would be proper for a bankruptcy court to intervene in a state court criminal proceeding.<sup>4</sup> This court does not necessarily disagree with that proposition. Furthermore, this court agrees with the *Williamson-Blackmon* court's finding that the automatic stay was not violated and that damages were not warranted.

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<sup>4</sup>See *In re Howard*, 122 B.R. 696 (W.D. KY. 1991) for an analysis of 11 U.S.C. § 105 with respect to enjoining state criminal proceedings

This court finds the facts of the present case disturbing. However, the statute is clear. 11 U.S.C. § 362(b)(11) provides an exception for the presentment and protest of check and 11 U.S.C. § 362(b)(1) allows the commencement or continuation of a criminal action or proceeding. Therefore, the Creditor's actions did not violate the automatic stay. Moreover, the court finds the analysis conducted in the case *In re Gruntz*, 202 F.3d 1074 (9<sup>th</sup> Cir. 2000) to be persuasive. In *Gruntz*, notwithstanding a Chapter 13 filing which planned to pay the arrearage, the debtor was convicted in state court of a misdemeanor for failing to pay child support. After the conviction,<sup>5</sup> the debtor filed an adversary proceeding asking the bankruptcy court for a temporary restraining order to prevent the state court from sentencing him. The bankruptcy court denied the request and the debtor was sentenced to 360 days in jail.

Subsequently, the debtor filed an adversary proceeding in the bankruptcy court requesting a declaration that the state criminal proceeding was void as being obtained in violation of the automatic stay. The bankruptcy court dismissed the complaint and the district court affirmed. A divided three-judge panel of the Ninth Circuit reversed. The Ninth Circuit then vacated the panel's decision and reheard the appeal *en banc*. It then determined that automatic stay was not violated. In doing so it stated,

Quite simply, the Bankruptcy Code declares that § 362 does not stay "the commencement or continuation of a criminal action or proceeding against the debtor." On its face, it does not provide any exception for prosecutorial purpose or bad faith. If the statutory command of the Bankruptcy Code is clear, we need look no further: it must be enforced according to its terms. *See United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989). Indeed, to do otherwise would insert phrases and concepts into the statute that simply are not there.

Not only does our notion of cooperative federalism caution against

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<sup>5</sup>An appeal was taken and the California Court of Appeals affirmed the conviction.

interference in ongoing state criminal proceedings, but the theory of bankruptcy law does as well. “The purpose of bankruptcy is to protect those in financial, not moral, difficulty.” *Id.* at 1085 (citation omitted). *See In re Evans*, 245 B.R. 852 (Bankr. W.D. Ariz. 2000).

This court is in agreement<sup>6</sup> and applying this rationale to the present facts finds that the Debtor’s request for 11 U.S.C. § 362 damages must be denied.

### **Conclusion**

Case law indicates that a bankruptcy court may, under the proper circumstances, enjoin a criminal state court proceeding. However, the Debtor has not provided the court with a case where the presentment and protest of a check or the commencement or continuation of a criminal prosecution has been found to violate the automatic stay. Therefore, 11 U.S.C. § 362(h) damages are unavailable to the Debtor. Since this is the only section relied upon, the complaint is dismissed in its entirety.

Dated:  
Albany, New York

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Hon. Robert E. Littlefield, Jr.  
United States Bankruptcy Court

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<sup>6</sup>The *Gruntz* court also acknowledged 11 U.S.C. § 105 was “a proper procedural avenue to forfend state actions that are not subject to the automatic stay but that threaten the bankruptcy estate...” *Id.* at 1086.

